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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,374	03/01/2004	Thomas J. Fogarty	2484 CON 10	9359
7590	01/17/2007		EXAMINER	
Mark Farber, Esq. U.S. Surgical a Division of Tyco Healthcare Group, LP 150 Glover Avenue Norwalk, CT 06856			TRUONG, KEVIN THAO	
			ART UNIT	PAPER NUMBER
			3734	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/17/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/790,374	<b>Applicant(s)</b> FOGARTY ET AL.
	<b>Examiner</b> Kevin T. Truong	<b>Art Unit</b> 3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 November 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 12-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All      b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

**Note: This is in response to an Amendment filed 11/13/2006.**

### **Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin (U.S. 5,591,183) in view of Michelson (U.S. 5,423,842).

Note in figures 7 and 8, Chin teaches the method steps as claimed by providing a long slender rod (700) with a handle (704), wherein the rod (700) and handle (704) being substantially coaxial and a segment located at the distal end of the rod (700) including a first **sideways** hook (708) and second **sideways** hook (710) extending from the rod (700) in an opposing direction from the first **sideways** hook (708); manipulating the rod (700) so as to slide the **sideways** hooks (708,710) around the artery (502); pushing and/or pulling the rod (700) to slide the **sideways** hooks (708,710) along the artery until the artery is separated from the surrounding tissue (see figures 8A-8C and col. 8, lines 1-28); and furthermore, wherein the **sideways** hook (710) defines an arc which is inherently capable of being within about 180 to about 270 degree. Chin does not disclose a segment of the slender rod (700) being offsetting the hook (708) from a longitudinal axis defined by the rod (700).

However, Michelson teaches in figures 1 and 3, that it is known in the surgical art to have a long slender rod (28) with a handle (14) on one end, a sideways hook (32) on the other end, and a segment (28) of the slender rod (28) being offsetting the hook (32) from a longitudinal axis defined by the rod (28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Chin's segment of the slender rod being offsetting the hook from a longitudinal axis defined by the rod as taught by Michelson in order to allow unobstructed visualization of the hook when operating on harvesting the artery.

***Response to Arguments***

Applicant's arguments filed 11/13/2006 have been fully considered but they are not persuasive. With respect to claims 1 and 7, in response to applicant's argument that nowhere does the Michelson patent disclose or suggest the handle and the rod are substantially coaxial. The Examiner clearly indicated in the above rejection that the rod (700) and handle (704) as shown in Chin '183 are being substantially coaxial with one another, the only feature that missing from the Chin '183 is the sideway hook not being offsetting from the longitudinal axis defined by the rod (700) and hand (704). For this reason, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Chin's segment of the slender rod being offsetting the hook from a longitudinal axis defined by the rod as taught by Michelson in order to allow unobstructed visualization of the hook when operating

on harvesting the artery. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The Examiner disagrees with Applicant's remarks and has maintained the grounds of rejection under 35 U.S.C. 103 (a) as being unpatentable over Chin '183 in view of Michelson '842 for the same reasons as set forth as indicated in the above rejection.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Kevin T. Truong  
Primary Examiner  
Art Unit 3734

ktt